CF0000064224

2

"allotted by the High Court Legal Services Committee"

IN THE HIGH COURT OF JUDICATURE, M.P. : JABALPUR.

CRIMINAL APPEAL NO. 1165 OF 2000

Ashok Jain,
Son of Babulal Jain,
Aged about 39 years,
R/o village Borai, Police Station-
Poolgaon, District- Durg (M.P.). **** APPELLANT

V E R S U S

State of Madhya Pradesh,
Through- Police Station Poolgaon,
District- Durg (M.P.). **** **** RESPONDENT

CRIMINAL APPEAL UNDER SECTION 374(2) OF CRIMINAL PROCEDURE CODE

4436

Filed on 25/4/2000
by Shri P. Pavekh Advocate

Ms. A.P.

15

DIVISION BENCH: HON'BLE SHRI FAKHRUDDIN AND HON'BLE SHRI DHIRENDRA MISHRA, JJ

Criminal Appeal No. 1165/2000

Appellant : Ashok Jain

Versus

Respondent : State of Madhya Pradesh

Shri M. K. Baeg Learned Counsel for the appellant
Shri Akhil Mishra Learned Panel Lawyer for the State.

JUDGMENT
(20.06.2006)

Dhirendra Mishra, J

The appellant has preferred this appeal under Section 374(2) of the Code of Criminal Procedure against the impugned judgment dated 16-3-2000 passed by learned Additional Session Judge, Durg in Session Trial No. 252/1999 convicting him under Section 302 of the IPC and sentencing to undergo imprisonment for life and pay a fine of Rs. 10,000/-, in default of payment of fine to further undergo RI for 2 years.

2. Case of the prosecution is that son of deceased Nohar Singh lodged report on 8-3-1999 in police station Pulgaon to the effect that when he returned from his agriculture field along with one Dasodia Bai Shaam Kunwar at about 6 P.M. his servant Sohan Sahu told him that accused/appellant had assaulted his father Nohar Singh with hammer near the *Toran Pan Thela* and he was lying in front of the said *Pan Thela* in an unconscious condition.

3. After registering the crime under Section 307 of the IPC, the Investigating Officer proceeded for the scene of occurrence. When the police reached the place of incident Nohar Singh was already dead. Thereafter merg

intimation Ex. P-20 was given by A.S.I. Shri J. S. Saggu on 8-3-1999. Subsequently body of Nohar Singh was sent for autopsy to District Hospital Durg vide Ex. P1/A. Doctor S. A. Mandge (PW-1) conducted postmortem examination on the body of the deceased and submitted his report Ex. P-1. Inquest was performed on the body of the deceased vide Ex. P-7 in the presence of witnesses after due notice of Ex. P-6. Weapon of offence i.e. Hammer, Specks and one Match Box were seized vide Ex. P-8 and plain soil and blood stained soil was seized vide Ex. P-9. Hammer so seized was sent to the doctor for his opinion and the doctor gave his opinion vide Ex. P-2 and stated that injuries present over the body of the deceased could be caused by hammer. Site plan of Ex. P-5 was prepared by Halka Patwari Shri P.L. Bhusakre (PW-3). Seized articles were sent to the Forensic Science Laboratory for chemical examination vide Ex. P-18 and the report of the Forensic Science Laboratory is Ex. P-26. The appellant was arrested on 9-3-1999 vide arrest memo Ex. P-24. After completing the investigation charge sheet was filed in the Court of Judicial Magistrate First Class, Durg who in turn committed the case to the Court of Session Judge, Durg from where learned Additional Session Judge, Durg received the case on transfer for trial.

4. Learned Additional Session Judge framed charge under section 302 of the Indian Penal Code. However, the appellant abjured the guilt.

5. The prosecution in order to establish the charge against the appellant has examined 17 witnesses in all. Statement of the accused was also recorded under section 313 of the Code of Criminal Procedure in which he did not dispute the eyewitness account given by the witnesses and stated that the witnesses were telling the truth. Accused has further stated that the

deceased used to harass him, visit his house and claimed himself to be the member of the family of the accused. He also stated that whenever he went out in connection with work, the deceased used to puncture the tyre of his bicycle and therefore when the situation became intolerable, he assaulted the deceased with hammer.

6. Learned counsel for the appellant submitted that the learned trial Court has convicted the appellant solely on the basis of his statement recorded under section 313 of the Code of Criminal Procedure which is not permissible under law. It is further argued that the alleged incident occurred because of continuous harassment meted out to the appellant by the deceased and in the aforesaid circumstances the trial Court ought to have taken a lenient view while convicting the accused. He further submitted that in any way the offence alleged against the appellant does not travel beyond section 304-II of the Indian Penal Code.

7. On the other hand learned counsel for the respondent /State supported the impugned judgment of conviction and sentence passed by the trial Court.

8. We have heard learned counsel for the parties and perused the material available on record including the impugned judgment passed by learned trial court.

9. Homicidal death of deceased Nohar Singh is not in dispute. Even otherwise, from perusal of the statement of Dr. Mandge as also the post mortem report in which the injuries detailed below were noticed, homicidal death of the deceased is established:

(i)- Mid. line-scalp lacerated wound 14 C.M. from nasal, 6x3 cm. deep up to bone longitudinal placed underneath, both parietal bones fractured. Depressed brine material peeping out.

(ii)- Irregular lacerated wound on the left side of the face, anterior and below the left ear 10.7 cm. from the angle of mandible and deep up to brain and vessels of the left site of the neck. The brain material came out, fracture of the mandible maxilla and zeugmatic bone temporal bone.

(iii)- Contusion of right parietal region fractured of underneath frontal bone both the parietal bone fractured.

(iv)- Lacerated wound on left thigh 3x2 x .5 cm.

(v)- Abrasion on right knee 2.5x1cm.

(vi)- Abrasion on left knee 3x2 cm.

10. So far as the involvement of the accused/appellant in crime in question is concerned, there are three eyewitnesses to the incident namely Madhavram (PW-6), Ramnath (PW-13) and Kusumlal (PW-15). Madhavram (PW-6) has stated that on the date of incident he was sitting in front of one Khelan's house situated near the tea stall of Toran and at a distance of about 100 ft. from there deceased was also sitting with one Ramnath Thakur. At that time he saw the accused assaulting the deceased on his head with hammer near the Jait Stambh as a result of which the deceased fell on the ground and thereafter the accused gave the second blow over his temporal region. In the meanwhile, brother of the accused Hemant also came there and caught hold of the appellant from back side. Ramnath (PW-13) has also stated in his statement that he was

19

present near the tea shop of Toran for the purpose of taking tea and sometime after his arrival deceased Nohar Singh also came there and sat beside him. He has further stated that both of them were sitting in the platform of Jait Stambh and were taking tea and at that time accused came there with hammer and assaulted deceased Nohar Singh on the back side of his head and as a result of the said assault Nohar Singh fell from the platform. Thereafter the accused gave three continuous blows over the temporal region of Nohar Singh. This witness shouted for help on which his younger brother came there and caught hold of the accused and thereafter number of persons also gathered there including the wife of the deceased. Kusumlal (PW-15), the owner of the Pan shop is also the eyewitness to the incident who has stated in the similar tune with PW-6 and PW-13. Defence has not been able to elicit anything in the cross examination which makes the prosecution evidence untrustworthy or unreliable in any manner. On the other hand statements of these witnesses are duly corroborated by the promptly lodged First Information Report in which the appellant has been named as the assailant. The statements of these witnesses are further corroborated by the post mortem report of the deceased in which corresponding injuries over the body of the deceased have been described. It is worth mentioning that even the appellant has not disputed the eyewitness account given by these witnesses in his examination under section 313 of the Code of Criminal Procedure.

11. Learned counsel for the appellant submitted that the appellant is a poor person and it shall not be possible for him to pay such a huge amount of fine imposed by the trial Court. He further submits that it would be in the

interest of justice that if keeping in view the financial status of the appellant, the fine amount is reduced to that of Rs. 500/- instead of Rs. 10,000/-. This submission is not opposed by the counsel appearing for the respondent/State.

12. Thus in view of the aforesaid discussion we are of the considered opinion that the prosecution has been able to establish the charge against the accused/appellant beyond all reasonable doubt and the Court below has not committed any illegality or infirmity in holding the appellant guilty under section 302 of the Indian Penal Code. However, taking into consideration the facts and circumstances of the case, financial status of the accused and the fact that the appellant in his statement under section 313 of the Code of Criminal Procedure has stated the truth, we are of the considered opinion that ends of justice would be served if the judgment of the Court below convicting and sentencing the appellant as mentioned above is maintained with a modification that the fine of Rs. 10,000/- imposed by the trial Court is reduced to that of Rs. 500/-.

13. In the result, the appeal fails and is hereby dismissed. However, the fine part of the impugned judgment is modified and penalty amounting to Rs. 10,000/- imposed on the appellant is reduced to that of Rs. 500/-. In other words, now the appellant is required to pay a fine of Rs. 5,00/- instead of Rs. 10,000/-, and in default of payment of fine he shall further undergo RI for one month instead of two years as directed by the trial Court.

Sd/- Fakhruddin Judge	Sd/- Dhirendra Mishra Judge